IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JANNEY MONTGOMERY SCOTT INC. and FRANK T. FIASCKI	:	CIVIL ACTION
v.	:	
CAROLE OLECKNA	:	NO. 99-4307

MEMORANDUM

Dalzell, J. May 15, 2000

Janney Montgomery Scott, Inc. ("Janney") and Frank T. Fiascki have brought this suit appealing an arbitral award in favor of defendant-customer Carole Oleckna on a claim she and her husband made against Janney and Fiascki. As the Ninth Circuit observed in another action where the broker and not the customer was the appellant, such an action "is a kind of man bites dog case." Rostad & Rostad, Inc. v. Investment Management & Research, Inc., 923 F.2d 694, 697 (9th Cir. 1991) (noting the securities industry's general enthusiasm for arbitration).

We here consider the parties' cross-motions for summary judgment.

I. Background

The parties have stipulated[1] to the following facts. Carole Oleckna maintained a brokerage account at Janney, and Fiascki was the registered representative assigned to her account. On December 23, 1997, Carole Oleckna and her husband,

[1]See Joint Stipulation of Facts (docket number 11).

William C. Oleckna, commenced an arbitration proceeding[2] by filing a statement of claim with the Philadelphia Stock Exchange, naming Janney and Fiascki[3] as respondents. The Statement of Claim alleged that wrongful actions occurred with respect to four accounts: the William Oleckna IRA account, the William Oleckna Pension and Profit Sharing Account; the Carole Oleckna IRA Account, and an account on which Carole Oleckna served as custodian for William Oleckna, Jr., her son.[4]

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[2]Pursuant to the trading agreement to which Janney and the Olecknas were parties.

[3]Though it is not included in the stipulation of facts, the parties do not appear to dispute that Fiascki was also the representative assigned to William Oleckna's accounts.

[4]As will be discussed below, our review of arbitral decisions is limited, and consequently the precise facts that were before the arbitral panel are not our concern here. Nonetheless, by way of further background, we will here describe the nature of the claims and defenses, as set forth in the statement of claim, Ex. A to the Complaint, and respondents' response to the statement of claim, Ex. B to the Complaint.

The Olecknas claimed that Fiascki had without authorization transferred funds from their retirement accounts into a general trading account, and had then churned that account through options trading, resulting in the loss of all of the Olecknas' retirement savings (approximately $227,000) and an unanticipated tax burden due to the funds transfers. The Olecknas claimed that their signatures had been forged on fund transfer forms and that Fiascki had a past record of similar wrongdoing.

In response, Janney argues that the Olecknas continued to trade on, and deposit funds in, their accounts with Janney for two years after they claim to have first discovered the wrongdoing. Moreover, Janney argues that William Oleckna was an informed investor who was in daily contact with Fiascki during the period in question, and that the Olecknas had provided written confirmation that they were aware of the tax implications of the movement of funds from their retirement accounts. According to Janney, William Oleckna had sought to invest in options through Fiascki, William Oleckna had represented to Fiascki that he was an experienced trader with a total net worth

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Carole Oleckna's IRA account held 100 shares of stock valued at $1,400 on August 27, 1992, and on that date the shares were transferred out of the account. There was no other activity in Carole Oleckna's IRA account. The claim regarding the son's account for which Carole Oleckna was custodian was withdrawn at the arbitration hearing.

The contract providing arbitration as the sole remedy was prepared by Janney, and the arbitration provision, paragraph 16 of the agreement, provides as follows:

> This agreement is subject to the following arbitration clause, and in agreeing to abide by its terms, the undersigned acknowledges that
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> - Arbitration is final and binding on the parties to such a proceeding.
> - The parties to this agreement are waiving their right to seek remedies in court, including the right to jury trial.
> - Pre-arbitration discovery is generally more limited than and different from court proceedings.
> - The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.
> - The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.
>
> Any controversy between you and the undersigned arising out of your business, this Agreement or any of the undersigned's

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[4](...continued)
of $10,000,000, and William Oleckna had personally directed the options trading by Fiascki and other Janney brokers. Finally, Janney argues, the Olecknas received trade confirmations and monthly statements detailing the account activity, and that consequently the activities in their accounts were well-known to them at the time.

> accounts with you, shall be submitted to arbitration conducted under the provisions of the Constitution and Rules of the Board of Governors of the New York Stock Exchange, Inc., under the arbitration rules of the Philadelphia Stock Exchange or under the terms of the Code of Arbitration Procedure of the National Association of Securities Dealers, Inc., as the undersigned may elect. If the undersigned does not make such an election within five business days after receipt from you of a notice requesting the election, you may make the election on behalf of the undersigned.

Stipulation of Facts at 2-3.

Pursuant to this arbitration provision, an arbitration panel of three arbitrators was convened and a hearing on the merits took place on July 8 and 9, 1999. The arbitration panel was properly appointed, notices were properly served and there were no objections, at the time of the hearing, to the manner in which the hearing was conducted. On July 27, 1999 the parties received a copy of the arbitral panel's decision.

The arbitral panel found as follows:[5]

> After viewing the submissions and, after hearing the proofs of the parties, the Arbitration Panel has ruled as follows:
> 1. The respondents, Frank Fiascki and Janney Montgomery Scott, Inc. are liable, jointly and severally, to Carole A. Oleckna in the amount of $171,000.00.

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[5]In their stipulation of facts, the parties stipulate that "[w]ith respect to the claims of William Oleckna, the arbitration panel ruled that the respondents were not liable to William Oleckna," and that "[t]he arbitration panel also decided that Fiascki and Janney were liable, jointly and severally, to Carole Oleckna in the amount of $171,000." Notwithstanding these stipulations, we find that the arbitral award speaks for itself, and thus we quote from that document in the text.

2. The respondents are not liable to William C. Oleckna.
3. The parties are responsible for their own attorneys' fees.
4. Claimants are responsible for their costs of arbitration.

Compl. Ex. J.

Janney and Fiascki filed a motion to vacate the arbitral award, arguing that Carole Oleckna had no claim against Janney or Fiascki that could have resulted in an award of $171,000.[6] Thus, they claim that the award is "unsupported by the facts," "arbitrary and capricious," and "fundamentally irrational," Mem. of Law in Supp. of Compl. at 4, and also that the arbitrators exceeded their powers and acted in manifest disregard of the law, see Compl. ¶ 22 & 23. In their response, the Olecknas argue that their position is that Carole Oleckna had an interest in her husband's IRA, of which she was a beneficiary, and therefore Carole Oleckna's claims before the arbitral panel were not limited to her own IRA.

We now consider the parties' cross-motions for summary judgment.

II. Analysis[7]

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[6]That is, Janney and Fiascki argue that the only account upon which Carole Oleckna asserted a claim at the arbitration was her own IRA account, which never had more than $1,400 in it.

[7]A summary judgment motion should only be granted if we conclude that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law," Fed. R. Civ. P. 56(c). In a motion for summary judgment, the moving party bears the burden of proving that no genuine (continued...)

A. Legal Standards

A court will set aside an arbitral verdict only in "very unusual circumstances," First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 942, 115 S. Ct. 1920, 1923 (1995), and there is a "strong presumption" here in favor of the award, Mutual Fire, Marine & Inland Ins. Co. v. Norad Reinsurance Co., 868 F.2d 52, 56 (3d Cir. 1989). Under the Federal Arbitration Act, we may vacate an arbitral award on a number of grounds:

> (1) Where the award was procured by corruption, fraud, or undue means.
> (2) Where there was evident partiality or corruption in the arbitrators, or either of them.
> (3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

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[7](...continued)
issue of material fact is in dispute, see Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 585 n.10 (1986), and all evidence must be viewed in the light most favorable to the nonmoving party, see id. at 587. Once the moving party has carried its initial burden, then the nonmoving party "must come forward with 'specific facts showing there is a genuine issue for trial,'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)) (emphasis omitted); see also Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986) (holding that the nonmoving party must go beyond the pleadings to show that there is a genuine issue for trial).

The mere existence of some evidence in support of the nonmoving party will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). However, we must "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pennsylvania Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995).

> (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a).[8] We may also vacate an award if the arbitrators displayed a "manifest disregard" of the law, First Options, 514 U.S. at 942, 115 S. Ct. at 1923, or if the arbitral award was "completely irrational." Mutual Fire, 868 F.2d at 56.

Even under these restrictive criteria, our review of arbitral decisions is quite circumscribed.[9] Stated most broadly, we are not here to review the merits of the arbitrators' decision, see United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 36, 108 S. Ct. 364, 370 (1987). We do not review for error either the arbitrators' interpretations of law, see Wilko v. Swan, 346 U.S. 427, 436, 74 S. Ct. 182, 187 (1953), or their interpretation of contractual provisions, see Bernhardt v. Polygraphic Co., 350 U.S. 198, 203 n.4, 76 S. Ct. 273, 276 n.4. To the extent that we review for "manifest disregard" of the law, such disregard is present only if the arbitrators recognized the

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[8]Here, Janney and Fiascki make no claims that the arbitrators were biased or that the conduct of the arbitration was tainted; thus, the only potentially applicable portion of 9 U.S.C. § 10 is subparagraph (a)(4).

[9]The limits placed on our review powers are in line with the general federal policy in favor of arbitration, see Southland Corp. v. Keating, 465 U.S. 1, 10, 104 S. Ct. 852, 858 (1984), cf. Bavarati v. Josephthal, Lyon & Ross, Inc. 28 F.3d 704, 709 (7th Cir. 1994) (Posner, C.J.) ("[S]hort of authorizing trial by battle or ordeal or, more doubtfully, by a panel of three monkeys, parties can stipulate to whatever procedures they want to govern the arbitration of their disputes; parties are as free to specify idiosyncratic terms of arbitration as they are to specify any other terms in their contract.").

existence of a governing principle of law, but chose to ignore it, see, e.g., Conntech Dev. Co. v. University of Conn., 102 F.3d 677, 687 (2d Cir. 1996). All of these principles go to reinforce the proposition that in deciding to vacate an arbitral award, it is not enough that we find that the arbitrators erred, but rather we must find that their decision indeed escaped the bounds of rationality.

Having thus laid out the standards that guide us here, we now consider the limited nature of the record in this case. The parties have stipulated to a set of facts, including the content of the contractual arbitration provision, which were recapitulated above. Janney and Fiascki have provided us with the Oleckna's Statement of Claim to the arbitral panel and Janney and Fiascki's response thereto,[10] as well as an affidavit of another of Janney's attorneys, Howard B. Scherer, regarding the claims that the Olecknas made against Janney before and during the arbitration. Carole Oleckna has also included as exhibits to her motion for summary judgment several exhibits that were presented before the arbitral panel. There appears to be no transcript of the arbitration hearing, and the arbitrators did not file any opinion or statement of reasons -- the only document resulting from the arbitration was the arbitral award, the pertinent section of which is quoted in the text above.[11] It is

[10]Including the supporting exhibits.

[11]We recognize that the thin record before us is not (continued...)

on the basis of this information that we must assess the arbitral award.

B. The Propriety of this Appeal

As a threshold matter, Oleckna argues that this appeal is improper under the language of the contractual arbitration provision. As quoted in the text above, the clause in the brokerage contract providing for arbitration stated that the arbitral award was "final and binding" and that the parties waived their right to seek remedies in court, but also stated that the right to appeal was "strictly limited". Oleckna argues that this language is "contradictory and ambiguous" and that we should therefore construe the contract against Janney and Fiascki, the contract's drafters, and refuse to hear the appeal.

We had rejected a similar argument from Oleckna in the context of a prior motion to dismiss under Fed. R. Civ. P. 12(b)(6). There, Oleckna argued that the contract's language stating both that the arbitration was "final and binding" and

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unusual and is indeed what one would expect given the deferential nature of our review, see IV Ian R. MacNeil et al., Federal Arbitration Law § 40.5.3 (1999). Thus, the record before us leaves the arbitration as something of a "black box": we know about what went in and what came out, but we do not have direct knowledge of what went on inside, with the exception of Scherer's affidavit regarding the Olecknas' claims. This character of the arbitrators' decision does impede our analysis in certain ways. For example, to the extent that "manifest disregard" of the law applies only if the arbitrators were aware of a principle of law but then chose to ignore it, the absence of transcript or other evidence internal to the arbitration certainly hampers any effort to determine what principles of law the arbitrators were aware of, much less if they chose to ignore them.

that remedies in court were waived foreclosed any appeal. We rejected that argument, finding that the "final and binding" language contemplated appeals under the Federal Arbitration Act[12], and that the explicit statement in the arbitration clause concerning appeals showed that the right to some form of appeal was understood by the parties to exist. Here, Oleckna has shifted her attack, now claiming that to the extent the contract contemplates both finality and appeal, the contract is ambiguous and unenforceable.

We find this argument to be without merit. In our prior Order, as discussed above, we found that the "final and binding" language used in the contract is in fact properly construed to permit appeals such as this one. Thus, there is in the first instance no ambiguity between the "final and binding" language and the later discussion of a "limited" appeal. To the extent that Oleckna argues that the contract remains ambiguous because the nature and scope of the appeal are not specified in the contract, such an omission -- if it can be characterized as one -- does not render the contract unenforceably ambiguous where the Federal Arbitration Act and associated case law lay out the grounds and procedure for review.

C. Application of the Standards for Vacating the Arbitral Award

[12]Citing Kennington Ltd, Inc. v. Wolgin, No. 97-7492, 1998 WL 221034 at *1 (E.D. Pa. May 6, 1998) and Perna v. Barbieri, No. 97-5943, 1998 WL 181818 at *1-2 (E.D. Pa. Apr. 16, 1998) aff'd 176 F.3d 472 (3d Cir. 1999).

1. The Parties' Arguments Regarding the Bases for the Award

In seeking summary judgment, Janney and Fiascki argue that the arbitral award should be vacated based on their fundamental belief that Carole Oleckna had no claim against them that was worth anything approaching $171,000. They first note that Carole Oleckna's sole account at Janney was the $1,400 IRA, and that therefore this sum is the maximum she could have lost -- no matter what Janney or Fiascki did -- and that consequently the award of $171,000 is irrational. Moreover, they argue that the liquidation of Carole Oleckna's IRA account -- done in one transaction -- cannot be defined as "churning", which was a claim the Olecknas made in their statement of claim.[13]

For her part, Oleckna argues that she suffered a loss from the alleged wrongdoing with respect to her husband's IRA

[13]During a scheduling conference with the Court, Oleckna's counsel stated that it was his recollection that the churning claims were dropped at the arbitration hearing and that instead the claims had gone forward under the Pennsylvania Consumer Protection Law, in part to allow the Olecknas to avail themselves of punitive damages. In their motion for summary judgment, Janney and Fiascki argue that this state law also could not apply to actions associated with Carole Oleckna's account. However, notwithstanding her counsel's stated recollection at the conference, Oleckna has not reiterated the position regarding state law in her summary judgment pleadings, and has made no arguments relying on the applicability of the state laws. We therefore will not consider the applicability or lack thereof of the Pennsylvania laws here. We note parenthetically that it would have been in Oleckna's interest to raise the argument that the arbitration was resolved solely under state law, since, as we found in our Order of October 29, 1999, our subject matter jurisdiction here is based upon the presence in the appeal of issues of substantive federal law.

account[14] both as a beneficiary of that account and as William Oleckna's wife (with respect to the unanticipated tax burden). Thus, argues Oleckna, there exists a basis for the arbitrators' award and, under our highly deferential standard of review, we should not vacate the award.

In their opposition to Oleckna's motion for summary judgment, Janney and Fiascki respond that Carole Oleckna never -- either in the Statement of Claim or at the arbitration itself -- asserted that she had an independent claim against Janney either as IRA beneficiary or taxpayer. Consequently, Janney and Fiascki contend that the arbitrators' award should be vacated as not arising from any claim made at the arbitration.

Janney and Fiascki further argue that Carole Oleckna has in fact no legal claim to the moneys liquidated from her husband's IRA because an IRA owner may liquidate or assign the funds in the account without the beneficiary's permission. Similarly, they aver, any claim of Carole Oleckna to moneys from the pension and profit sharing account would vest only after the account holder's death.[15] Janney and Fiascki also contend that

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[14]William Oleckna's IRA was the account with which most of the alleged wrongdoing and losses were associated.

[15]As discussed above, we do not here engage in a merits review of the arbitrators' decision. However, we do note that some of the materials provided to us that were also before the arbitral panel do refer to the relationship between Carole Oleckna and her husband's retirement accounts relevant to Janney and Fiascki's arguments here.

Oleckna includes as exhibits to her motion for summary judgment several of the exhibits introduced at the arbitration,

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they would have no liability to William Oleckna, never mind Carole Oleckna, for unanticipated tax liabilities caused by unauthorized transfers from William Oleckna's retirement accounts, even if such transfers did occur.[16]

2. Assessment of the Arbitral Award

We are thus left to consider whether, on the basis of the set of undisputed facts[17], the arbitral award is sufficiently

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[15](...continued)
one of which, Exhibit B, is made up of various filled-in "Qualified Plan Distribution Letters" by which an account holder approves distributions from his account. These forms are printed by Janney -- the legend at the top reads "Janney Montgomery Scott, Inc./Retirement Planning Department" -- and they each contain a signature line for "Consent of Spouse"; that is, Janney's own forms required spousal consent to move funds from a pension and profit sharing plan notwithstanding Janney and Fiascki's contention here that the spouse has no claim to the money in the account.

In any event, Carole Oleckna claimed that her signature on these forms had been forged. The sums transferred under these forms is not trivial; one of the forms alone documents the transfer of "$74,000". Based on the account number reported, these forms pertain to William Oleckna's profit sharing and pension account, and the Oleckna's Statement of Claim before the arbitration alleged churning and wrongful transfers of fund from their "retirement" accounts, without specifically differentiating between the IRA and pension accounts.

[16]Janney and Fiascki argue that the arbitral panel "found as a threshold matter that Janney did nothing wrong in connection with the liquidation" of the pension and profit sharing account funds, Pls.' Opp'n to Def.'s Mot. for Summ. J. at 6. We cannot agree with this characterization. As quoted in the text above, the arbitral award did not explicitly state findings or conclusions with respect to particular claims, but instead merely stated what moneys were owed to whom.

[17]As discussed above, outside of the stipulation of facts, there are few pieces of evidence before us here. To the extent that both sides have provided documents related to the arbitration (i.e., the Statement of Claim and the response, and the various exhibits from the arbitration), there has been no
(continued...)

flawed with respect to the facts and the law to warrant vacation. We conclude that, under our highly deferential standards of review, the award is not so flawed, and thus we will not disturb the arbitral award and will grant Oleckna's motion for summary judgment. As discussed above, there are a number of different grounds and standards for vacating an arbitral award, and we will address each that applies here.

We begin with the question of whether the arbitrators exceeded their powers in making the award in violation of 9 U.S.C. § 10(a)(4).[18] Naturally, the arbitrators' authority stems in the first instance from the arbitration clause of the brokerage agreement, which was quoted in the text above. The clause states that "[a]ny controversy" between the brokerage and the customer "arising out of [the brokerage's] business, this Agreement or any of the [customer's] accounts with you" are submitted to arbitration. We first observe that there can be no question that the Olecknas' claims against Janney and Fiascki

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[17](...continued)
dispute as to their authenticity. The only evidence about which there might be some dispute would seem to be attorney Scherer's affidavit regarding the claims the Olecknas did or did not make; however, given our findings below, such a dispute would not be material to the resolution of the instant motions.

[18]Although Janney and Fiascki make this claim in paragraph 22 of their Complaint, they do not make discrete arguments with respect to this ground for vacating the award either in their memorandum in support of the Complaint or in their motion for summary judgment. Nonetheless, we shall consider it briefly here.

fell within this broad ambit, involving as they did claims that Janney and Fiascki improperly managed the Olecknas' accounts.

The next document that serves to delineate the arbitrators' power is the Statement of Claim, see IV Ian R. MacNeil et al., Federal Arbitration Law § 40.5.3 at 40:67 (1999), and so we must ask whether the arbitrators' award was within the scope of the claims raised. The Olecknas' Statement of Claim was quite broad: it states generally that there had been unauthorized transfers from and trading in the Olecknas' retirement accounts and that the couple had thus lost all their retirement money and was subject to unanticipated tax burden, see Ex. A, Mem. of Law in Supp. of Compl. The Statement of Claim did not specify exactly which moneys were owed to which of the Olecknas by Janney and Fiascki, but rather alleged liability in general to the couple for the moneys lost and the taxes owing. The arbitral award, as discussed above, was similarly non-specific about the disposition of specific claims, but instead stated simply that while nothing was owed to William Oleckna, Janney and Fiascki owed Carole Oleckna $171,000. Given the broad nature of the Statement of Claim, we cannot find that the award was outside of the powers granted to the arbitrators by virtue of the claims.[19]

[19]Janney and Fiascki argue that the Statement of Claim did not allege their potential liability to Carole Oleckna as a beneficiary or as a taxpayer, and that thus the award is improper because it did not stem from any claim before the arbitral panel. As can be readily seen, however, such a claim, though perhaps not articulated, was certainly a subset of the much broader claims made in the Statement of Claim that were before the panel, and (continued...)

Moreover, the arbitration clause of the contract contains no limitations on the types of awards that the arbitrators may craft. We thus conclude that the arbitrators did not exceed their authority, and thus we cannot vacate the award on the basis of 9 U.S.C. § 10(a)(4).

We next examine whether the arbitrators acted in manifest disregard of the law in making their award. "Manifest disregard of the law", as discussed earlier, is a standard stricter than its language suggests: to conclude that the arbitrators acted with manifest disregard, we must conclude that they were aware of governing principles of law, and then chose to ignore them. In approaching this analysis, however, we immediately observe, as we did in the margin above, that the relative absence of information about the arbitration hearing and the arbitrators' reasoning prevents us from reaching such a conclusion. We are simply not in a position to say what the panel considered and what it ignored. To the extent that Janney and Fiascki claim that the award was clearly contrary to law, we will consider that below.

Having concluded that there are no grounds to vacate the award on the basis of a manifest disregard for the law or the arbitrators' exceeding their powers, we now consider whether the

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[19](...continued)
consequently we find that the award was not outside the universe of awards at least made conceivable by the scope of the claim. In any event, Janney and Fiascki direct us to no authority to the effect that arbitration claims must be made with such particularity as to void the award here on these grounds.

award is "completely irrational". Recall that Janney and Fiascki's claim of irrationality is based on the propositions that: (1) Carole Oleckna never had more than $1,400 in a Janney account, so consequently that account could not rationally yield the $171,000 award; and (2) Carole Oleckna has no legal claim to damages based the liquidation of her husband's retirement accounts or the unanticipated tax burden caused thereby, and so consequently the $171,000 could not rationally be based on her beneficiary or taxpayer status. On consideration, however, we find that the award was not "completely irrational".

Fundamentally, Janney and Fiascki have conflated the concept of error by the arbitral panel with that of irrationality. Janney and Fiascki argue at some length that neither case law nor statute supports an award to Carole Oleckna on the basis, as Oleckna suggests in her pleadings, of her status as a beneficiary of William Oleckna's retirement accounts and as a taxpayer who evidently was partly liable for the unanticipated tax burden caused by the liquidation of retirement funds. We note at the threshold that this argument pre-supposes that these were indeed the motive for the award, a fact that is not present in the record.[20] But even if the panel was acting on the reasons

[20]Janney and Fiascki made these arguments in response to Oleckna's own suggestion that such a rationale would justify the award, and Janney and Fiascki repeatedly aver that Oleckna is unable to articulate a legal theory to justify the award. However, the presumption here is in favor of the award, and it is not Oleckna's burden to find an appropriate justification for the arbitral panel's actions.

Oleckna supposes, Janney and Fiascki's contentions still essentially amount only to an allegation that the panel got the law wrong -- but this by itself does not amount to a claim of irrationality. Mere error, even serious error, even if it clearly exists, is not sufficient to prompt us to vacate an arbitral award, and thus "irrationality" cannot simply be the sort of error that Janney and Fiascki allege here, but something more. That is, Janney and Fiascki cannot satisfy the grounds of "irrationality" by arguing, as they do, that no correct interpretation of the law would result in such an award.

Here, the panel considered a claim by both Carole Oleckna and William Oleckna in which they together alleged that their retirement savings had been wiped out by Janney and Fiascki's wrongdoing with respect various brokerage accounts, and also that the Olecknas had incurred a tax burden as a result of the misbehavior. After hearing the evidence, the panel awarded solely to Carole Oleckna -- one of the two claimants in the arbitration -- a sum that was significantly less than the losses that she and her husband had alleged in their Statement of Claim. We cannot find that such a result is "irrational".[21]

The Third Circuit case Janney and Fiascki cite as the basis for the "irrationality" test illustrates the distinction between an "irrational" award and the one the arbitrators reached

[21]We would contrast this with an award that declared Janney and Fiascki to be liable to some third party not named in the Statement of Claim, or an award that found liability in an amount in excess of the sum alleged in the claim.

here. In Swift Indus., Inc. v. Botany Indus., Inc., 466 F.2d 1125 (3d Cir. 1972), the Court considered an appeal from an arbitration conducted pursuant to an agreement between Swift and Botany by which Swift received the shares of two of Botany's subsidiaries -- Allegheny Mortgage Company and Lincoln Homes Company -- in exchange for Swift stock. As it turned out, the two subsidiary corporations were liable for a substantial tax burden arising from Premier Corporation of America, their owner prior to Botany: in specific, Premier -- Allegheny and Lincoln's old parent company -- had a tax deficiency of approximately $6,000,000 for tax years 1960 and 1961, for which the parent and subsidiaries were jointly and severally liable. Under the terms of the agreement, Botany had warranted to Swift that no such tax burdens on Allegheny and Lincoln existed, and an arbitration between the two companies ensued over this claim.

The arbitral panel found that Botany was liable to Swift for the tax burdens associated with Allegheny and Lincoln, and also that Botany was obligated to pay to Swift a $6,000,000 cash or surety bond to protect Swift, Allegheny, and Lincoln from the tax levy. Botany appealed the award and the district court vacated the award as to the bond. On appeal, our Court of Appeals affirmed, in part[22] on the ground that the bond provision

[22]The court also found that the award of a bond did not draw it essence from the agreement between the parties, and therefore could not stand. As discussed above, there is nothing here to suggest that the arbitral award of a sum of money to Carole Oleckna on the basis of allegations of wrongdoing by

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in the award was completely irrational, for the following reason. Before to the arbitration, six of Premier's old subsidiaries, all of whom were on the hook for Premier's tax liability, and including Allegheny and Lincoln, had entered into an agreement apportioning on a percentage basis their liability for Premier's taxes for various tax years at issue. Pursuant to this agreement, Allegheny was liable for about one-tenth of the taxes for the 1960 tax year deficiency and Lincoln was liable for about one-third of the tax liability for tax year 1961 (recall that the total tax burden for those two years was about $6,000,000). The Swift panel found that this agreement ensured that the total tax liability of Allegheny and Lincoln could not exceed approximately $1,500,000, and that therefore the $6,000,000 bond was irrational.

This exposition of the Swift facts makes clear the distinction between that "irrational" award and the one entered here. Swift found that the $6,000,000 bond was irrational on the basis that, essentially as a matter of fact, Botany simply could not owe that much money to Swift, and that consequently a bond in that amount made no sense. The Court asked: "Can a $6 million cash bond award be deemed rational in view of a maximum $1.5 million liability under the Sharing Agreement?" It answered: "We think not." Swift, 466 F.2d at 1134.

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[22](...continued)
Janney and Fiascki did not arise from the brokerage contract or the Statement of Claim.

This situation is easily distinguished from that here. Janney and Fiascki argue that the award to Carole Oleckna is irrational not because the joint claim of Carole and William Oleckna as a couple -- and they did assert their claim in just such a manner -- was not so great as the $171,000 award, but rather because the award of such a sum to Carole Oleckna alone must reflect an improper interpretation of the law.[23] The irrationality of the decision, then, is tied to what may be an incorrect interpretation of the law, rather than to the question of whether the amount awarded was within the realm of the claim. This is quite different from the circumstances of the Swift decision, where the bond the arbitrators awarded exceeded the amount for which the arbitration respondent might under any circumstances be liable. We thus conclude that the arbitrators' award to Carole Oleckna was not "completely irrational."

III. Conclusion

[23]We recognize that Janney and Fiascki do claim that because the only Carole Oleckna account in dispute was her $1,400 IRA, the award of $171,000 simply makes no sense. However, in examining the outcome of an arbitration, we must look at the arbitration as a whole: here, Carole and William Oleckna made a joint claim, which clearly alleged losses in excess of $171,000. Neither in the Statement of Claim nor in the award were the claims or awards "itemized" as to each account. Thus, the award of $171,000 was clearly within the bounds of the amount in controversy at the arbitration. This is in contradistinction to the Swift bond award, which the court found was in excess of the amount of money at issue. Had the arbitral panel awarded Carole Oleckna $1,000,000, or some similarly extravagant sum beyond that asserted in the claims, such an award would be a clear candidate for a finding of irrationality. But that is not this case.

We have found, on the undisputed facts before us, that the arbitrators' award of $171,000 to Carole Oleckna on her claim against Janney Montgomery Scott Inc. and Frank Fiascki was neither in excess of the arbitrators' powers, nor in manifest disregard of the law, nor completely irrational. We therefore find that there is no cause to vacate the award, and it shall stand. We will thus grant Oleckna's motion for summary judgment, and deny that of Janney and Fiascki. An Order to this effect follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JANNEY MONTGOMERY SCOTT INC. and FRANK T. FIASCKI	:	CIVIL ACTION
v.	:	
CAROLE OLECKNA	:	NO. 99-4307

ORDER

AND NOW, this 15th day of May, 2000, upon consideration of plaintiffs Janney Montgomery Scott Inc. ("Janney") and Frank T. Fiascki's motion for summary judgment, and defendant Carole Oleckna's motion for summary judgment and Janney and Fiascki's response thereto, and for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

1. Janney and Fiascki's motion for summary judgment is DENIED;

2. Oleckna's motion for summary judgment is GRANTED;

3. The July, 1999 Arbitral Award (the "Award") is CONFIRMED;

4. JUDGMENT IS ENTERED for Carole Oleckna and against Janney Montgomery Scott Inc. and Frank T. Fiascki in accordance with the Award; and

5. The Clerk shall CLOSE this case statistically.

BY THE COURT:

_____
Stewart Dalzell, J.